THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ADELE LAFRANQUE,	)	
Employee	)	OEA Matter No. 2401-0032-10
	)	
v.	)	Date of Issuance: February 8, 2012
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
	)	

John Mercer, Esq., Employee's Representative
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 9, 2009, Adele LaFranque ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the D.C. Public Schools'("DCPS" or "Agency") action of abolishing her position as a Counselor through a Reduction-In-Force ("RIF"). The effective date of the RIF was November 2, 2009.

This matter was assigned to me on or around November 15, 2011. Thereafter, I scheduled a Prehearing Conference for December 14, 2011, in order to assess the parties' arguments, and to determine whether an Evidentiary Hearing was necessary. The Prehearing Conference was later rescheduled for December 16, 2011, per Agency's request. During the Prehearing Conference, Employee noted that she retired from Agency after she was presented with the RIF notice. Subsequently, I issued an Order on December 19, 2011, wherein I required Employee to address whether OEA may exercise jurisdiction over this matter due to Employee's retirement. Employee submitted a written response to my Order on January 24, 2012, and Agency submitted a reply to Employee's response on January 26, 2012. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether this Office may exercise jurisdiction over this matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

There is a question as to whether OEA has jurisdiction over this appeal. During the Prehearing Conference, Employee mentioned that she retired after receiving the RIF notice. However, Employee contends that her retirement was not voluntary since the only reason she retired was because her position was being abolished by the RIF. In her brief on jurisdiction, Employee asserts *inter alia* that she intended to work through the 2009-2010 school year before considering voluntary retirement. Employee also maintains that the RIF was abrupt and the timing was inconveniently designed to create uncertainty and an environment of fear. She went on to note that, as a result of the RIF, she was "forced to make a hastened retirement decision based on misinformation, lack of material information, unfair treatment, lack of due process and within a non-negotiable Agency imposed date…"[1] Employee further notes that she attended a DCPS sponsored workshop designed to instruct several RIF employees on applying for retirement. In its response to Employee's brief pertaining to jurisdiction, Agency maintains that the RIF Notice dated October 2, 2009, gave Employee an option to retire if she met certain criteria. Agency also maintains that, Employee was informed of the consequences of retiring in lieu of being RIFed. Specifically, Employee was informed that if she chose to retire, upon receiving the RIF notice, she may not have the option of appealing her RIF with OEA.[2] Additionally, Agency asserts that Employee also had the option to speak with Human Resources in the event she had questions about retirement.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

> (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . ., an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . ., or a reduction in force [RIF]. . . .

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 629.1, *id.*, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue."

[1] *See* Employee's Brief Pertaining to Jurisdiction at pg. 7.
[2] *See* Agency's Response to Employee's Brief Pertaining to Jurisdiction at pg. 2.

This Office has no authority to review issues beyond its jurisdiction.[3] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[4] The issue of an Employee's voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office, and the law is well settled with this Office that, there is a legal presumption that retirements are voluntary.[5] Furthermore, I find that this Office lacks jurisdiction to adjudicate a voluntary retirement. However, a retirement where the decision to retire was involuntary, is treated as a constructive removal and may be appealed to this Office.[6] A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."[7] The Employee must prove that his/her retirement was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which he/she relied when making his/her decision to retire. He/she must also show "that a reasonable person would have been misled by the Agency's statements."[8]

Here, Employee contends that her retirement was not voluntary because she interpreted the RIF Notice as requiring her to apply for retirement; she was immediately placed on administrative leave; she did not chose her retirement date; she was not given a reasonable time to make a choice; and that she only retired after she had received the RIF notice. I disagree. The RIF Notice simply informed Employee of her options – appeal the RIF or Retire if you qualify, and not a mandate to retire. The Notice also provided Employee with details on how to go about getting appeal or retirement information. Also, thirty (30) days is a reasonable time to get information, seek counsel and make an informed decision. Lastly, Employee's misinterpretation of the options in the RIF Notice is of her own doing. Regardless of Employee's protestations, the fact that she chose to retire instead of continuing to litigate her claims voids the Office's jurisdiction over her appeals. And the facts and circumstances surrounding Employee's retirement was Employee's own choice and Employee has enjoyed the benefits of retiring. Furthermore, I find no *credible* evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee.

Simply choosing to retire over being RIFed does not make an employee's retirement involuntary. There is no evidence that Agency misinformed Employee about her option to retire during the Workshop or in the RIF Notice. Based on the foregoing, I find that Employee's retirement was voluntary.[9] As such, this Office lacks jurisdiction over this matter, and for this reason, I am unable to address the factual merits, if any, of this matter.

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[3] *See Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[4] *See Brown v. District of Columbia Pub. Sch.*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).
[5] *See Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975); *Charles M. Bagenstose v. D.C. Public Schools*, OEA Matter No. 2401-1224-96 (October 23, 2001).
[6] *Id.* at 587.
[7] *See Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995), and *Covington v. Department of Health and Human Services*, 750 F.2.d 937 (Fed. Cir. 1984).
[8] *Id.*
[9] The Court in *Christie* stated that "[w]hile it is possible plaintiff, herself, perceived no viable alternative but to tender her resignation, the record evidence supports CSC's finding that plaintiff chose to resign and accept discontinued service retirement rather than challenge the validity of her proposed discharge for cause. The fact remains, plaintiff *had a choice*. She could stand

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

pat and fight. She chose not to. Merely because plaintiff was faced with an inherently unpleasant situation in that her choice was arguably limited to two unpleasant alternatives does not obviate the involuntariness of her resignation." *Christie, supra* at 587-588. (citations omitted).